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**JUN 09 2006**

In re Application of

Alvarez, et al.

Application No. 10/789,757

Filed: February 27, 2004

Attorney Docket No. 090936.0517

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**OFFICE OF PETITIONS**

**DECISION ON PETITION**

This is a decision on the petition under 37 CFR 1.181(a) to withdraw the holding of abandonment, filed March 10, 2006. The petition will also be treated as a petition under 37 CFR 1.10.

The petition under 37 CFR 1.10 is **granted**.

The petition under 37 CFR 1.181(a) to withdraw the holding of abandonment is also **granted**.

This application was held abandoned on December 11, 2004, after it was believed that no response was received to the non-final Office action September 10, 2004, which set a shortened statutory period for reply of three (3) months from its mailing date. Extensions of the time set for reply were available pursuant to 37 CFR 1.136(a). A Notice of Abandonment was mailed on April 26, 2005, indicating that a reply was not received.

**TREATMENT UNDER 37 CFR 1.10**

Section 711.03(c) of the *Manual of Patent Examining Procedure* provides, in pertinent part, that:

37 CFR 1.10(c) through 1.10(e) and 1.10(g) set forth procedures for petitioning the Director of the USPTO to accord a filing date to correspondence as of the date of deposit of the correspondence as "Express Mail." A petition to withdraw the holding of abandonment relying upon a timely reply placed in "Express Mail" must include an appropriate petition under 37 CFR 1.10(c), (d), \* (e)>, or (g)< (see MPEP § 513). When a paper is shown to have been mailed to the Office using the "Express Mail" procedures, the paper must be entered in PALM with the "Express Mail" date.

The instant petition is being treated under 37 CFR 1.10 accordingly. Petitioner maintains that a response to the September 10, 2004, non-final Office action was mailed via the United States

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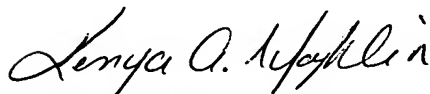
Postal Service, Express Mail Service on December 9, 2004. A review of the reply that was allegedly mailed on December 9, 2004, reveals that Express Mail tracking number EV351291447US was cited thereon. A copy of the Express Mail tracking receipt for this package was previously provided noting a date-in of December 9, 2004. The evidence is convincing that a response to the non-final Office action was deposited the Express Mail Service on December 9, 2004. The petition under 37 CFR 1.10 is granted.

TREATMENT UNDER 37 CFR 1.181

The amendment filed responsively to the non-final Office action is noted as having been received December 9, 2004, as per the decision on the petition under 37 CFR 1.10. As a response to the non-final Office action was timely received, the holding of abandonment was improper and is withdrawn, accordingly.

Further inquiries regarding this decision may be directed to the undersigned at (571) 272-3222.

The application file is being forwarded Technology Center 3600, GAU 3662, for further processing.

A handwritten signature in black ink, appearing to read "Kenya A. McLaughlin".

Kenya A. McLaughlin  
Petitions Attorney  
Office of Petitions